IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

Bail Appl..No. 6816 of 2007()

C.R.NO.109/07 OF ADOOR EXCISE RANGE.

PETITIONER

PRADEEP.T.C.S/O.CHELLAPPAN,
THEAKATHUDIYIL VEEDU, MUZIUOORKONAM MURI
PANDALUM VILLAGE TALUK, PATHANAMTHITTA DISTRICT.

BY ADV. SRI.P.GOPAKUMARAN NAIR
SRI.C.S.DIAS
SRI.AJITH MURALI

RESPONDENTS: RESPONDENT

STATE OF KERALA ,REPRESENTED BY THE
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 6816 OF 2007

Dated this the 22nd day of November, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. He was allegedly found to carry in his possession 17 litres of arrack on 28/9/07. He abandoned the articles and took to his heels. Therefore, he could not be arrested. Crime has been registered. Investigation is pending. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. According to him, false and exaggerated allegations are raised against the petitioner at the instance of one Excise Guard by name Sajikumar who allegedly hails from the same locality. The learned counsel for the petitioner prays that directions under Sec.438 of the

Cr.P.C. may be issued in favour of the petitioner to save him from the undeserved trauma of arrest and detention.

3. Notice was given to the learned Public Prosecutor. The Case Diary did show that one Sajikumar was one of the official attestors to the seizure mahazar. In the light of the submission that there is a criminal case initiated by the said Sajikumar against the petitioner, the learned Public Prosecutor was requested to place the Case Diary before me for my perusal. I have perused the same. Arguments have been heard. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the criminal case initiated by the said Sajikumar has nothing to do with the detection of this crime. In fact, the allegation in that crime is only that because of the animosity arising from the fact that the said Sajikumar was a witness to the seizure mahazar, he was assaulted on a later date by the petitioner herein.

4. Having considered all the relevant inputs, I find absolutely no features in this case which can justify or warrant the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioner must surrender before the Investigating Officer or the learned Magistrate

having jurisdiction and then seek regular bail in the usual and normal course.

5. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge